

SEHC: Structural Options

SECHSO 4: Structural Options

Housing providers throughout Australia utilise a variety of legal structures.

In choosing an appropriate structure, it is important to recognise that the structures have different characteristics and requirements and it is important to assess their respective advantages and disadvantages:

Who can be members.

Protection offered to members.

The obligations of members.

The purpose and whether trading or operating a business is a main purpose.

The principles and practices that underpin the different structures.

Reporting requirements and the cost.

Flexibility in activities.

Charges and administrative fees.

Whatever the form of incorporation, the board is responsible for ensuring that legal obligations are being met. Consistent with the advice of DHS, four business structures are identified.

Association

Company Limited by Guarantee

Company Limited by Shares

Co-operative

Association

The Associations Incorporation Act 1981 governs the conduct of associations in Victoria. It was introduced to provide a simple and inexpensive means for small voluntary organisations to obtain legal status with limited liability, perpetual succession, the ability to enter contracts and the power to acquire, hold and dispose of property. An Association can only trade with the public if this is ancillary to the association's purpose.

Co-operative Federation of Victoria Ltd: These notes are a guide only. The notes should not be used as a substitute for legal advice.

Company Limited by Guarantee

Corporations Law governs the conduct of companies in Australia – including a Company Limited by Guarantee. ASIC is the main regulatory body for companies throughout Australia. Setting up and ongoing filing and regulatory requirements may need legal advice. A public company made up of members and governed by a board of directors. Can trade with the public in more than one state. If a not for profit, then, a company limited by guarantee is appropriate. A member's liability is limited by a guarantee to contribute a specified amount. If the company ceases to trade and its assets do not meet the liabilities, members will be called upon to share in the payment of the shortfall to the extent of their guarantee.

Company Limited by Shares

Corporations Law governs the conduct of companies in Australia – including a Company Limited by Shares. ASIC is the main regulatory body for companies throughout Australia. If profits are to be generated and distributed a company limited by shares may be appropriate. Setting up and ongoing filing and regulatory requirements may need legal advice. A company that is funded by contributions from its members through share capital. Each member is allotted one or more shares and terms are prescribed as to the payment for each share.

Co-operative

The Co-operatives Act 1996 governs the conduct of co-operatives in Victoria. A co-operative is an organisation concerned with providing the needs of its members. This enables the individual member to benefit from economies of scale, ie the combined purchasing, distribution or marketing power or influence of the group.

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